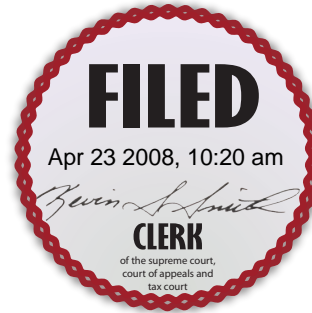


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRIAN K. WYNNE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 41A01-0712-CR-590

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APPEAL FROM THE JOHNSON SUPERIOR COURT

The Honorable Cynthia S. Emkes, Judge

Cause No. 41D02-0701-FB-2

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**April 23, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Defendant Brian Wynne appeals following his convictions and sentence, pursuant to a guilty plea, for three counts of Class B felony Burglary,<sup>1</sup> for which he received an aggregate twenty-year sentence in the Department of Correction. Upon appeal, Wynne challenges the appropriateness of this sentence in light of the nature of his offenses and his character. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

According to the factual basis entered at the time of his plea hearing, on January 10, 2007, Wynne broke and entered the dwelling of Timothy Whitaker with the intent to commit a theft inside. Again, on January 12, 2007, Wynne broke and entered both the dwelling of Paul Donica and the building, structure, or dwelling of Raybon Cox, with the intent to commit a theft inside each one. During these burglaries, Wynne and his accomplice took jewelry, golf clubs, handguns, and a motor vehicle for purposes of selling them.

On January 19, 2007, the State charged Wynne with two counts of burglary, and on February 6, 2007, with a third count. On July 12, 2007, Wynne pled guilty to the three counts of Class B felony burglary pursuant to an open plea agreement in which the State agreed to recommend concurrent sentences in exchange for Wynne's plea and his agreement to testify against his alleged accomplice, Ernest Davis.

At the September 27, 2007 sentencing hearing, a deputy Marion County prosecutor testified on Wynne's behalf that Wynne had served as a State's witness in its

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<sup>1</sup> Ind. Code § 35-43-2-1 (2006).

case against Howard Harris, who was tried for two counts of murder and four counts of attempted murder and subsequently convicted. The prosecutor expected that Wynne would similarly testify against Harris's co-defendant, Royal Ennis. In addition, as a term of his plea agreement, Wynne was required to testify against his co-defendant Davis. The trial court applauded Wynne for his cooperation with the State but concluded this cooperation had been duly accounted for in his plea agreement to concurrent sentences. Upon taking note of Wynne's extensive criminal history, the trial court sentenced Wynne to maximum twenty-year sentences, with the sentences to be served concurrently. This appeal follows.

### **DISCUSSION AND DECISION**

Wynne's sole challenge on appeal is to the appropriateness of his maximum twenty-year sentences. Wynne claims his cooperation with the State warrants a sentence below the maximum, regardless of whether the sentences are concurrent. The State responds that Wynne, in receiving concurrent sentences, received due credit for his cooperation and that his extensive criminal history merits the maximum sentences.

Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the “Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the

offense and the character of the offender.” We exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires that we give “due consideration” to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant’s burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

With respect to the nature of his offenses, Wynne, in an admittedly drug-induced fervor over a three-day span, broke into and entered three separate dwellings, one of which he pried open with a crowbar while it was occupied, for the purpose of removing a motor vehicle, handguns, jewelry, and golf clubs, among other items, to later sell. Nothing about the nature of these repeating burglaries suggests a twenty-year sentence is inappropriate.

Regarding Wynne’s character, we acknowledge and commend Wynne for his cooperation with the Marion County prosecutor in the Harris and, presumably, the Ennis trials, as well as with the Johnson County prosecutor in Davis’s trial. But as the trial court noted, Wynne’s cooperation was already factored into his plea. Under the current charges, Wynne’s exposure was sixty years; under the plea he received a substantially reduced sentence of twenty years. In addition, Wynne was to receive another benefit for his cooperation in that the instant sentence was to be served concurrently with any sentence he received upon pleading guilty to three Marion County burglary charges pending at the time of his sentencing.

Wynne has a remarkable criminal history, much of it involving similar property crimes, among them four felony convictions for burglary, three of which occurred in 2004; two Class C felony convictions for auto theft; and three prior Class D felony convictions for theft or auto theft. In addition, Wynne has multiple Class C felony convictions for various other offenses including child molesting, battery, forgery, and conspiracy to commit escape, as well as misdemeanor convictions for operating while intoxicated, certain handgun violations, and four convictions for resisting law enforcement. In light of this extensive criminal history demonstrating a fairly extraordinary disregard for others and their property, we are not inclined to view Wynne's character as undeserving of a twenty-year sentence, regardless of his attempts to rehabilitate it through his cooperation with the State. Indeed, it was this cooperation which permitted him the substantial benefit of a twenty-year sentence to run concurrent to any sentence in his three Marion County burglary cases.

Having reviewed the nature of Wynne's offenses and his character, we conclude that his twenty-year aggregate sentence for his three Class B felony burglaries was not inappropriate.<sup>2</sup>

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.

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<sup>2</sup> Wynne requests that we order the revision of his sentencing order to reflect his credit time of 259 days. In fact, the trial court already provided for this 259-day credit time in its sentencing order.